



This document is scheduled to be published in the Federal Register on 02/09/2016 and available online at <http://federalregister.gov/a/2016-02511>, and on FDsys.gov

DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0238]

Parts and Accessories Necessary for Safe Operation; TowMate, LLC Application for an Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant TowMate, LLC's (TowMate) application for a limited two-year exemption to allow motor carriers to operate rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations. Under the Federal Motor Carrier Safety Regulations (FMCSRs), all required lamps, with the exception of battery-powered lamps used on projecting loads, must be powered by the electrical system of the motor vehicle. The Agency has determined that use of rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations would not have an adverse impact on safety, and use of these systems under the terms and conditions of the exemption would achieve a level of safety equivalent to or greater than the level of safety provided by the regulation. This decision is consistent with an August 2005 amendment to the FMCSRs to allow battery powered lamps on the rear of projecting loads.

DATES: This exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and ending [INSERT DATE TWO YEARS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Luke Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, (202) 366-0676,

Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

Docket: For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

TowMate's Application for Exemption

TowMate applied for an exemption from 49 CFR 393.23 to allow motor carriers to operate rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.23, "Power Supply for Lamps," provides that "All required lamps must be powered by the electrical system of the motor vehicle with the exception of battery powered lamps used on projecting loads."

The application stated:

TowMate is making this request because the use of conventional hard wired temporary stop, turn, and tail lights has many drawbacks that wireless tow lights solve. These include broken connections, frayed wires, burnt out incandescent bulbs, and the potential to be snagged or pulled from the tow light receptacle due to improper running of wires, and road hazards, along with the safety hazard of increasing the amount of time spent on the roadside or the scene of an accident by stringing wired lighting systems between vehicles and securing the wires. With the advent of LED technology coupled with advancements in battery technologies, wireless tow lights are more reliable and better equipped for the rigors of daily temporary use.

Temporary wireless stop, turn, tail lighting systems can operate for 10+ hours of continuous use on a full charge, and in-cab wire-less monitoring systems give the driver constant information on the functioning of the system, displaying state of charge of the battery inside the unit, displaying the functioning of the system during operation, and warning the driver if the unit is no longer functioning. In this sense, wireless tow lights provide a level of safety and redundancy that is not currently required on wired temporary lighting systems. In an emergency situation with a drained battery, power can be directly connected to the temporary wireless stop, turn, and tail lighting system from a standard 4 pin or 7 pin electrical connection.

Without the proposed temporary exemption, tow and haul away operators will be forced to continue to use cumbersome wired temporary towing light systems, placing an unnecessary burden on their daily operations. The current temporary lighting requirements for stop, tail, and turn lamps require that the lamps receive their power from a direct wired connection to the towing vehicle with no ascertainable benefit from doing such. Wireless tow lights afford benefits that wired systems are unable to, such as redundancies like monitoring the status of the unit in real time, thus assuring their proper operation at all times.

Comments

On August 6, 2015, FMCSA published notice of the TowMate application and requested public comment (80 FR 47031). The Agency received thirteen comments, all in support of TowMate's application.

The Towing and Recovery Association of America, Inc., and the Wisconsin Towing Association commented that hard-wired temporary stop, tail and turn signal lighting systems take additional time to install on the side of the road or highway as compared to wireless systems, leaving tow operators vulnerable and at greater risk of being struck and injured by passing motorists. These commenters stated that use of rechargeable wireless temporary stop, turn, and tail lighting systems would help eliminate this hazard, and provide a safer working environment.

Seven commenters identified themselves as owners of small towing companies that use rechargeable wireless temporary stop, turn, and tail lighting systems when conducting temporary emergency tows. These commenters echoed the comments above, noting that use of the wireless systems allows operators to clear accident scenes from roadways faster and thereby increases tow operator safety.

Four additional commenters supported TowMate's application, noting the same benefits as the other commenters.

Discussion

Prior to August 2005, section 393.23 of the FMCSRs was titled "Lighting devices to be electric," and stated "Lighting devices shall be electric, except that red liquid-burning lanterns may be used on the end of loads in the nature of poles, pipes, and ladders projecting to the rear of the motor vehicle." In a final rule published on August 15, 2005, FMCSA amended section 393.23 of the FMCSRs to incorporate terminology which is more consistent with current industry standards and practices (70 FR 48008). Specifically, the title of section 393.23 was revised to read "Power supply for lamps," the reference to red liquid-burning lanterns was removed as obsolete, and – as it relates to the subject exemption application – the rule was

amended to permit the use of battery powered lamps on projecting loads. With respect to the use of battery powered lamps, the August 2005 rule states “With the exception of *temporary* lamps used on projecting loads, lamps are required to be powered through the electrical system of the commercial motor vehicle.” [Emphasis added].

Motor vehicles transporting loads which extend more than 4 feet beyond the rear of the motor vehicle, or which have tailboards or tailgates extending more than 4 feet beyond the body, are required to mark those projections when the vehicle is operated during the hours when headlamps are required. Specifically, each side of the projecting load is required to be marked with one red side marker lamp, visible from the side, located to indicate the maximum overhang, and the rear of the projecting load is required to be marked with two red lamps, visible from the rear, one at each side, and two red reflectors visible from the rear, one at each side, located so as to indicate the maximum width of the projection. By expressly permitting battery powered lamps on projecting loads via the August 2005 final rule, the Agency has directly acknowledged the viability of lighting systems powered by sources other than the vehicle’s electrical system in limited applications where the lamps required by the regulations are temporary in nature due to the specific vehicle operation.

Section 393.17 of the FMCSRs prescribes the lighting requirements for vehicles engaged in driveaway-towaway operations. A vehicle combination consisting of a tow vehicle pulling a wrecked or disabled vehicle is considered a driveaway-towaway operation, and the combination needs to be equipped with the lighting devices specified in section 393.17. Specifically with respect to the rear of the rearmost towed vehicle in such a combination, section 393.17(b)(2) requires at least two tail lamps, two stop lamps, two turn signals, two clearance lamps, and two reflectors, one of each type at each side. In addition, if any vehicle in the combination is 80 inches or more in overall width, there must be three identification lamps on the rear. Similar to the temporary lamps required on the rear of projecting loads, the required

lamps on the rear of a wrecked or disabled vehicle being transported to a motor carrier's terminal or facility for repairs are temporary in nature.

FMCSA Decision

FMCSA has evaluated the comments received in support of TowMate's application. The Agency agrees that permitting the use of rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations will reduce the time tow operators spend at the side of the road connecting wired lighting systems between vehicles, thereby reducing their risk of injury and increasing safety. The Agency believes that use of the rechargeable wireless lighting systems will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. This decision is consistent with the amendment made in the August 2005 final rule to allow battery powered lamps on the rear of projecting loads.

Terms and Conditions for the Exemption

The Agency hereby grants the exemption for a two-year period, beginning [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and ending [INSERT DATE TWO YEARS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. During the temporary exemption period, motor carriers will be allowed to use rechargeable wireless temporary stop, turn, and tail lighting systems that do not meet the lighting power supply requirements of 49 CFR 393.23 during temporary towing operations, provided the requirements of 49 CFR 393.17(b)(2) are met. The exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) motor carriers and/or commercial motor vehicles fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Interested parties possessing information that would demonstrate that motor carriers

using rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Issued on: [DATE] January 29, 2016

T.F. Scott Darling, III
Acting Administrator